



DATE: SEP 19 1994,

CASE NO.: 94-JSA-5

IN THE MATTER OF:

VICTOR POLEWSKY,
Complainant,

v.

VERMONT DEPARTMENT OF EMPLOYMENT AND TRAINING,
Respondent.

Appearances:

Victor Polewsky, Pro Se

David Copeland, Vermont Department of Employment and Training

Yvonne K. Sening, United States Department of Labor

BEFORE: John M. Vittone
Deputy Chief Judge

DECISION AND ORDER

This matter arises under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. § 49 et seq., and the Department of Labor regulations issued at 20 C.F.R. Part 658.

Procedural History

Complainant, Victor Polewsky, filed a complaint against the Vermont Department of Employment and Training (Department) on April 9, 1992. Mr. Polewsky alleges that a Department employee erroneously referred Mr. Polewsky to the wrong site for an interview with Richard Electric, a participating employer in the Vermont Job Services Program. On May 4, 1992, David Copeland, Assistant Director Employment & Training Programs for the Department, issued the Department's determination. Mr. Copeland explains that Department staff members at the Burlington and Barre offices did not follow correct procedures, creating a situation where Mr. Polewsky was referred to the wrong interview site.

By letter dated May 14, 1992, Mr. Polewsky appealed the Department's determination. Mr. Polewsky wrote, "[f]or your failure to place matters on proper basis, in addition to actual

damages I will be seeking punitive damages as well as any other damages as may be allowed according to law. ”

A hearing in this matter was conducted before a state hearing officer on June 15, 1992, by telephone. The state hearing officer issued a decision on June 26, 1992, and ruled that even though the Department made an error, the regulations do not provide for damages under the circumstances in this case.

Mr. Polewsky appealed the state hearing officer’s decision to the Regional Administrator (RA) of the Employment and Training Administration, U.S. Department of Labor. In a decision issued on November 25, 1992, the RA affirmed the state hearing officer’s decision that the regulations do not provide a basis for relief.

Mr. Polewsky states that he appealed the RA’s decision to this Office on December 9, 1992. Due to an apparent administrative error, this case was not docketed in this Office. However, Mr. Polewsky’s appeal was accepted, and the case has been treated as if it was referred to this Office on June 14, 1994.

On June 24, 1994, I ordered the parties to submit any legal arguments and documentation and notified the parties that a decision would be made whether to schedule a hearing or make a decision based on the record. Mr. Polewsky filed a Petition for Hearings on July 8, 1994. On July 15, 1994, the United States Department of Labor, Office of the Solicitor (DOL), filed a letter representing the RA. DOL states that the RA’s determination should be affirmed and indicates that it will present no further arguments in this matter. By letter dated July 20, 1994, the Department maintains that the RA’s findings should be affirmed. On August 3, 1994, the undersigned re-docketed this appeal as case number 94-JSA-5.

Discussion and Order

In his November 25, 1992 determination, the RA states that Mr. Polewsky objected to having a hearing held by telephone in this case. However, the RA did not address this issue in the determination.

For the same reasons articulated in my Decision and Order issued in Case Number 94-JSA-6 (Polewsky v. Vermont Department of Employment and Training), the determination of the RA is VACATED and this case is REMANDED to the state agency for proceedings consistent with that decision.

JOHN M. VITTON
Deputy Chief Judge

JMV/dcm/eca